

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 2, 2013 at 10:00 a.m.

1. [12-22801](#)-C-13 SUK KIM MOTION TO DISMISS CASE
NLE-1 C. Anthony Hughes 9-4-13 [[52](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

October 2, 2013 at 10:00 a.m.

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtors are causing unreasonable delay that is prejudicial to creditors. Debtors' Motion to Confirm was denied by the court at a hearing held on August 13, 2013. No subsequent amended plan or Motion to Confirm has been filed to date. Unreasonable delay that is prejudicial to creditors is sufficient cause for dismissal pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

4. [12-22413](#)-C-13 BASSAM ABUKHAZNEH MOTION TO DISMISS CASE
NLE-1 Jerome B. Friedman 9-4-13 [[77](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

5. [12-36616](#)-C-13 CURTIS/TINA LANDS MOTION TO DISMISS CASE
NLE-1 James L. Keenan 9-6-13 [[40](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 6, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the

assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default with respect to the terms of the confirmed plan. Based on Trustee's calculations, Debtors are delinquent \$2,100.00 in plan payments. Prior to the hearing on this matter, another payment of \$1,050.00 will come due; therefore, Debtors will need to pay \$3,150.00 to bring the plan current by the hearing date. Pursuant to 11 U.S.C. § 1307(c)(6), material default by a debtor with respect to a term of a confirmed plan is sufficient cause for the court to dismiss a case.

Cause exists to dismiss the case. The motion is granted and the case is dismissed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

6.	<u>13-29216</u> -C-13	ROBERT FINE	MOTION TO DISMISS CASE
	NLE-1	David Foyil	8-29-13 [<u>23</u>]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 29, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Trustee's Notice of Hearing stated that its Motion to Dismiss was being brought pursuant to Local Bankruptcy Rule 9014-1(f)(2); however, the language in the Notice of Hearing was that usually associated with a Motion brought pursuant to Local

Bankruptcy Rule 9014-1(f)(1). Therefore, due to potential confusion regarding whether a written response was required, the court will treat Trustee's current Motion to Dismiss as brought pursuant to Local Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

(1.) Debtor did not appear at the First Meeting of Creditors held on August 22, 2013. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

(2.) Debtor is delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,845.00 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date.

(3.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(4.) Debtor filed a plan on August 14, 2013; however, he has not served all interested parties and has not filed a companion Motion to Confirm the plan. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors, which was held on August 22, 2013. Forty-five days has elapsed since that day as of the date of this hearing. 11 U.S.C. § 1324.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13

case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

7. [13-21724](#)-C-13 BARBARA SHAWCROFT MOTION TO DISMISS CASE
NLE-3 Stephen M. Reynolds 9-3-13 [[107](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtor's Bankruptcy Case on the following grounds:

(1.) Debtor is \$1,275.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,635.00 is due on January 25, 2013. Debtor has paid \$20,535.00 into the plan to date.

(2.) Debtor did not prosecute its Motion to Confirm, which was set for hearing and denied on July 16, 2013. As of the date Trustee filed his Motion to Dismiss, Debtor has not filed and Amended Plan.

Debtor's Opposition

Debtor opposes Trustee's Motion to Dismiss on the following grounds:

(1.) Debtor asserts she is current on plan payments and requests that the court take judicial notice of a copy of the National Data Center collected on September 18, 2013, showing that Debtor is current on all payments. (Dkt. 113)

(2.) Debtor intends to file an Amended Plan.

Debtor filed an Amended Plan and Motion to Confirm on September 20, 2013. The account ledger Debtor provided from the National Data Center shows consistent plan payments in the amount of \$3,210.00 made from March 2013 through August 2013. Debtor filed her bankruptcy petition on February 8, 2013 and Debtor's original plan reflects monthly plan payments of \$3,210.00. (Dkt. 5). It does not appear, from the record, that Debtor is delinquent on plan payments.

Cause does not exist to dismiss Debtor's Bankruptcy Case and the Trustee's Motion is Denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

8.	<u>13-28930</u> -C-13 STEVEN/ROBERTA NLE-1 CHRISTENSON Al J. Patrick	MOTION TO DISMISS CASE 9-3-13 [<u>20</u>]
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of

law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case on the following grounds:

(1.) Debtor did not appear at the First Meeting of Creditors held on August 5, 2013. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee does not have sufficient information to determine whether or not this case is suitable for confirmation with respect to 11 U.S.C. § 1325.

(2.) Debtor is \$43.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,343.00 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date.

(3.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

Debtors' Opposition

Debtors' oppose Trustee's Motion to Dismiss on the following grounds:

(1.) Debtor attended the Meeting of Creditors held on September 12, 2013.

(2.) Debtors' payments are current under the First Amended Plan.

(3.) At the September 12, 2013 Meeting of Creditors, Debtors provided to the Trustee a copy of their 2012 Federal Tax Return.

(4.) At the September 12, 2013 Meeting of Creditors, Debtors were told by the Trustee that to avoid dismissal, the following were required before the end of the day on September 17, 2013:

(A.) An Amended Plan filed and set for Confirmation.

(B.) Debtors pay a shortage of approximately \$43.00 to bring the original plan current.

(C.) Debtors personally appears at Trustee's office and present individual social security cards.

Debtors completed all the tasks requested by the Trustee.

(5.) Debtors filed an Amended Plan on September 17, 2013 with a companion Motion to Confirm.

Debtors cured their delinquency, provided the Trustee with required tax documents, and filed an Amended Plan. Debtors appeared at the September 12, 2013 Meeting of Creditors where they were examined by the Trustee. Cause does not exist to dismiss the case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is not granted and the case is not dismissed.

9. [13-28431](#)-C-13 KHALID KHAN ORDER TO SHOW CAUSE - FAILURE
Robert McCann TO PAY FEES
8-28-13 [[36](#)]

Final Ruling: The court issued an order to show cause based on Debtor not paying the required fees in this case (\$140.00 due on August 23, 2013). The court docket reflects that on September 9, 2013, the court received Debtor's final installment payment.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtor is \$912.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$456.00 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date. Debtors actions are resulting in unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

11. [11-46633](#)-C-13 SURJIT KUMAR AND POONAM MOTION TO DISMISS CASE
NLE-1 KAUSHAL 9-4-13 [[61](#)]
Scott A. CoBen

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

12. [13-27437](#)-C-13 JOANN ARTIAGA MOTION TO DISMISS CASE
TSB-1 C. Anthony Hughes 9-13-13 [[42](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

13.	<u>12-22343</u> -C-13	BOATAMO MOSUPYOE	MOTION TO DISMISS CASE
	NLE-1	Richard Kwun	9-4-13 [<u>69</u>]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default with respect to the terms of the confirmed plan. Debtor's plan, section 5.03, states that if the plan will not complete within 60 months, the Trustee may request appropriate relief. Based on Trustee's calculations, the plan will complete in 75 months as opposed to 60 months, exceeding the amount of time permitted under 11 U.S.C. § 1322(d). In a plan paying 100% to unsecured creditors, filed unsecured claims were \$16,474 greater than scheduled. Debtor has a pending student loan claim (Claim #9) not provided for that prevents the plan from completing within 60 months.

Debtors' Opposition

Debtor opposes Trustee's Motion to Dismiss. The student loan creditor at issue is ECMC. Prior to filing, Debtor elected to defer payments to ECMC and continued to defer payments after filing for bankruptcy. Schedule J is accurate and shows no monthly student loan payment allocated to ECMC. Debtor requests that the court amend the Order Confirming the plan previously filed on March 24, 2013 to include authorization for Debtor's deferment with student loan creditor, ECMC.

Discussion

Debtor's Schedule J, most recently filed on 12/15/2012, reflects an expense of \$250.00 per month for a "Student Loan payment." It is not clear from Schedule J whether this is a payment to Debtor's other student loan creditor, Great Lakes Educational Loan Services, or to ECMC. Debtor did not file any documents demonstrating that ECMC granted a deferment. Because it remains unclear from Schedule J and the lack of documentation whether a deferment was granted and because feasibility of the plan relies on confirmation of deferment, the court will continue Trustee's Motion to grant Debtor time to file proof of deferment.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is continued to [date] at [time] to allow
Debtor to submit documentation of deferment.

14.	13-26653 -C-13	BARBARA COCKERHAM	MOTION TO DISMISS CASE
	TSB-1	Mohammad M. Mokarram	9-13-13 [62]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

15. [13-30454](#)-C-13 LEROY THOMAS MOTION TO DISMISS CASE
TSB-2 Sunita N. Sood 9-13-13 [[19](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 9, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because on the following grounds:

(1.) Debtor is causing delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor is \$360.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$360.00 is due on September 25, 2013. Debtor has paid \$360.00 into the plan to date.

(2.) Debtor has not filed a motion to confirm the plan filed on July 26, 2013. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors. 11 U.S.C. § 1324. The first meeting of creditors was held and concluded on August 15, 2013. Debtor is causing delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

17. [13-27563](#)-C-13 AMANDA STONE MOTION TO DISMISS CASE
TSB-2 Scott J. Sagaria 9-13-13 [[27](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtors have not prosecuted their Bankruptcy Case, causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor's Motion to Confirm was heard and denied on July 23, 2013. Debtors have not filed an Amended plan.

Debtors' Opposition

Debtors oppose Trustee's Motion to Dismiss on the grounds that Debtors cannot propose a confirmable plan without cooperation from Nationstar Mortgage, their mortgagee. Debtors have been processing a loan modification with Nationstar for "several months" and when it appeared they were close to reaching an agreement, Debtors received a letter dated August 14, 2013, notifying Debtors that Nationstar sold Debtors' account to AMS Servicing, LLC, effective August 30, 2013. Debtors are now starting the loan modification process with AMS Servicing, LLC. Debtors request that the court grant further time to file an amended plan to allow for the loan modification process to complete.

The court is mindful of the loan modification application process and the potential delays involved, especially when mortgages are sold or servicing is transferred between different companies. It appears that Debtors are working diligently to present a feasible plan to the court and are attempting to prosecute their case. Therefore, the court will deny the Motion to Dismiss as cause does not currently exist.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is not granted and the case is not dismissed.

19. [13-29869](#)-C-13 JAMES STEVENSON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-30-13 [[16](#)]

CASE DISMISSED 8/30/13

Final Ruling: The case having previously been dismissed on August 30, 2013, the Order to Show Cause is discharged as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot.

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case because Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor is \$1,500.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,900.00 is due on September 25, 2013. Debtor has paid \$400.00 into the plan to date.

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,514.52 delinquent under the terms of the confirmed plan. 11 U.S.C. § 1325(a)(6). Debtor is in material default pursuant to section 6.03 of the plan, which requires Debtor to complete the plan within 60 months. Based on Trustee's calculations, the plan will complete in 81 months. Furthermore, Debtor did not provide for the priority claim of the Franchise Tax Board in the amount of \$11.62. 11 U.S.C. § 1307(c)(6).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

22. [13-26783](#)-C-13 CARLA JOHANSEN
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-20-13 [[51](#)]

Final Ruling: The court issued an order to show cause based on Debtor not paying one or more installment(s) according to the schedule specific in the court's Order granting leave to pay the filing and administrative fees in installments. The amount of \$70.00, due on August 15, 2013, was not paid. Debtor made her final fee installment payment on August 30, 2013 (Dkt. 57).

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Order to Show Cause having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Order to Show
Cause is discharged, no sanctions are ordered,
and the case shall proceed.

23. [13-26187](#)-C-13 LUALHATI/GEORGE MAGPUSAO
NLE-2 Najeeb U. Kudiya

MOTION TO DISMISS CASE
9-4-13 [[49](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the

court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Trustee's Objection to Confirmation was sustained at a hearing held on July 16, 2013. Debtor has not filed a subsequent amended plan.

Debtors' Opposition

Debtors oppose Trustee's Motion to Dismiss on the grounds that an Amended Plan was filed on September 16, 2013 with a corresponding Motion to Confirm on September 17, 2013.

Given that Debtors have filed an Amended Plan and set confirmation of the plan for hearing, cause no longer exists to dismiss the case. Debtors are taking the steps necessary to prosecute their Bankruptcy Case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is denied and the case is not dismissed.

24.	<u>13-28894</u> -C-13	VASILIIY LAZARESKU	MOTION TO DISMISS CASE
	TSB-3	Pro Se	9-9-13 [<u>36</u>]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se), and Office of the United States Trustee on September 9, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the

assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case on the following grounds:

(1.) Debtor is \$100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date.

(3.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven date before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(4.) Debtor filed 2 prior bankruptcy cases that are not listed on the current petition. Cases 09-39138-7 and 11-43383-7 are not accounted for on Debtor's petition. 11 U.S.C. § 1325(a)(1).

Cause exists to dismiss the case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case for the following reasons:

(1.) Debtor is \$1,569.29 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,569.29 is due on September 25, 2013. Debtor has paid \$3,138.58 into the plan to date. Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

(2.) Creditor Wells Fargo Bank's Objection to Confirmation was sustained at a hearing on July 16, 2013. No subsequent Amended Plan or Motion to Confirm has been filed. 11 U.S.C. § 1307(c)(1).

Debtors' Opposition

Debtors plan to file a Motion to Convert the case to Chapter 7 before September 30, 2013.

To date, a Motion to Convert has not been filed with the court. Therefore cause currently exists to dismiss Debtors' Chapter 13 case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

26. [13-26698](#)-C-13 SHAWANNA DAVIS MOTION TO DISMISS CASE
NLE-1 James L. Keenan 9-4-13 [[26](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor is \$2,325.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$775.00 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date. Furthermore, Trustee's Objection to Confirmation was sustained at a July 16, 2013 hearing and Debtor has not filed a subsequent plan or motion to confirm.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.